

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: W.R. GRACE & CO., <i>et al.</i>, Debtors.	§ § § § § §	Chapter 11 Jointly Administered Case No. 01-01139 (JKF)
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**FEE AUDITOR'S FINAL REPORT REGARDING FORTY-SECOND QUARTERLY
FEE APPLICATION OF KIRKLAND & ELLIS LLP FOR THE INTERIM
PERIOD OF JULY 1, 2011 THROUGH SEPTEMBER 30, 2011**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Forty-Second Quarterly Fee Application of Kirkland & Ellis LLP for the Interim Period of July 1, 2011 through September 30, 2011 (the "Application").

BACKGROUND

1. Kirkland & Ellis LLP ("K&E") was retained as counsel to the Debtors. In the Application, K&E seeks approval of fees totaling \$847,526.50 and expenses totaling \$32,343.05 for its services from July 1, 2011 through September 30, 2011 (the "Application Period").

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2011, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Issued January 30, 1996 (the "U.S. Trustee Guidelines"), as well as for consistency with

precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We served an initial report on K&E based upon our review, and we received a response from K&E, portions of which response are quoted herein.

DISCUSSION

3. We noted the following time entries of professionals who billed only a *de minimis* amount of time on the case:

7/8/2011	Susan Engel	.20	Review summary of appellate rules and procedure.
7/11/2011	Susan Engel	.80	Review appellate rules and procedure (.5); review Third Circuit docket for bankruptcy appeal (.3).
7/21/2011	Susan Engel	.20	Review draft memorandum re lenders' issue.
		1.20	
7/15/2011	Patrick J King	1.50	Correspond with T. Mace re location of documents subject to document subpoena (.6); conduct research to identify documents re same (.9).
		1.50	
8/21/2011	Joshua Kogan	.80	Review plan and disclosure statement.
8/30/2011	Joshua Kogan	1.20	Confer with A. Paul re closing documents (.6); review exhibits to plan (.6).
		2.00	
9/5/2011	Daniel E Wolf	.50	Analyze potential corporate transactions.
9/6/2011	Daniel E Wolf	.70	Analyze potential corporate transactions.
		1.20	

The foregoing professionals performed no other work on the case during the Application Period. We scrutinize more closely the work of professionals who appear to have only fleeting involvement

with the case.¹ We asked K&E to explain how this work benefited the estate, and K&E responded:

Paragraph 3 of the Initial Report requests further information concerning certain *de minimis* time entries that were included in the Fee Application. Specifically, Ms. Engel specializes in appellate litigation and assisted the Debtors in their analysis of the appropriateness of certain requests that may be made if there is an appeal of the confirmation order entered in these Chapter 11 Cases to the United States Court of Appeals for the Third Circuit. Given Ms. Engel's appellate expertise, it was much more efficient for Ms. Engel to analyze this issue. Mr. King is the associate with the most knowledge regarding the previous criminal case involving the Debtors and, therefore, responded to the Debtors' request for certain documents related to the criminal case. Again, Mr. King's involvement was much more efficient than involving someone else who works on the Chapter 11 Cases more often given Mr. King's knowledge of the criminal cases. Mr. Kogan's involvement in the Chapter 11 Cases is related to the finalization of the myriad plan documents that are required in connection with any future effective date of the plan. Mr. Kogan has been tasked with this responsibility given Mr. Kogan's corporate expertise and it is likely that Mr. Kogan will be more involved in the Chapter 11 Cases as the Debtors move closer to a future effective date. Finally, Mr. Wolf is an expert in mergers and acquisitions, along with Delaware corporate law generally. Mr. Wolf assisted the Debtors in analyzing a possible corporate transaction involving Delaware corporate law, and given Mr. Wolf's expertise, it made it much more efficient to involve Mr. Wolf than to engage outside Delaware counsel to assist the Debtors with their analysis of the effect of Delaware law upon the Debtors' possible corporate transaction.

We accept K&E's response and have no objection to these fees.

CONCLUSION


4. Thus, we recommend approval of \$847,526.50 in fees and \$32,343.05 in expenses for K&E's services for the Application Period.

¹As stated by the court in *In re Jefsaba, Inc.*, 172 B.R. 786, 800 n. 9 (Bankr.E.D.Pa. 1994):

Requests to compensate for services of professionals whose time is *de minimis* raises a red flag in our review. Other than professionals with a special expertise, the fleeting involvement of bankruptcy attorneys in a case often results from a staffing inefficiency. Given the itinerant attorney's lack of knowledge of the case, the attorney's time may be less productive than attorneys regularly assigned to the case. When this occurs, we would expect an appropriate deduction be made to the time charged.

Respectfully submitted,

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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 19th day of January, 2012.


Warren H. Smith

SERVICE LIST

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